

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MOUNT SHASTA MILLING COMPANY)

For Appellant: Michael T. Hennessy, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Junior Counsel

O P I N I O N

This appeal is made pursuant to Section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the claims of Mount Shasta Milling Company for refund of franchise tax in the amount of \$1,351.15 for the taxable year 1958.

Appellant is a corporation which ceased business on March 31, 1958. On that date it also distributed its assets to its shareholders. A certificate of election to wind up and dissolve was filed with the Secretary of State on June 4.

On March 15, Appellant filed its franchise tax return for the taxable year 1958, income year 195'7, and paid \$1,351.12, which was half of a full year's tax. On June 26, Appellant filed a claim for refund of half the amount previously paid, or \$675.56. In this claim, Appellant stated that it had dissolved and distributed its assets to its shareholders on March 31, 1958. Respondent took no action on the claim until in a telephone conversation on September 15 Appellant was informed by Respondent that a tax clearance certificate would have to be requested and that the tax would not cease until a certificate of winding up and dissolution was filed with the Secretary of State.

On September 18, Appellant sent Respondent a remittance for \$1,351.12 representing the second half of the tax for the year and also wrote a letter stating that the payment was under protest and contending that the June 26 claim for refund was also a request for a tax clearance certificate. Respondent treated the September 18 letter as a request for a tax clearance certificate and sent the certificate on October 1. Appellant filed its certificate of winding up and dissolution with the Secretary of State on October 8.

Section 23332 of the Revenue and Taxation Code provides that if a corporation dissolves during a taxable year it shall pay a tax only for the months of the year which precede the effective date of dissolution. Regulation 23331-23334(b), Title 18, California Administrative Code, provides that the proration of the

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tax shall be on the basis of whole months and that periods of less than half a month are to be disregarded. Respondent treated the September 18 letter as a claim for refund of the amount paid with that letter, \$1,351.12. Respondent concluded that Appellant was entitled to a refund of 3/12 of the full year's tax and \$675.53 was refunded. Respondent denied the balance of the two claims for refund. Appellant contends that it is liable for tax only for 3/12 of the year or at the most for 6/12 of the year and that an additional refund should be made.

Section 23332 provides that the tax is based on the number of months "which precede the effective date of such dissolution." Section 23331 provides that the effective date of dissolution of a corporation is the date on which the certificate of winding up and dissolution is filed with the Secretary of State. Section 23334 of the Revenue and Taxation Code and Section 5201 of the Corporations Code require a tax clearance certificate from the Franchise Tax Board to be filed with the Secretary of State before the certificate of winding up and dissolution may be filed. The Corporations Code makes a clear distinction between a certificate of election to wind up and dissolve (Sections 4600-4606) and a certificate of winding up and dissolution (Sections 5200 and 5201). In the light of these unambiguous statutory provisions we find no escape from the conclusion that the effective date of dissolution of Appellant was October 8, 1958, the date of filing the certificate of winding up and dissolution with the Secretary of State.

Appellant relies on Bank of Alameda County v. McColligan, 69 Cal. App. 2d 464, which held that under Section 1k)(1) of the Bank and Corporation Franchise Tax Act (the predecessor of Section 23332 of the Revenue and Taxation Code), the effective date of dissolution of a corporation was when it ceased to do business, distributed its assets to its shareholders and filed a certificate of election to dissolve. At the time of the Bank of Alameda County case the statute did not define the phrase "effective date of such dissolution." Subsequent to the decision in the Bank of Alameda County case the definition of "effective date of dissolution" was added to the statute and is now found in Section 23331. Accordingly, the Bank of Alameda County case is not controlling as to taxable years subsequent to the statutory amendment defining "effective date of dissolution."

Appellant attempts to make a case in the nature of estoppel on the basis that Respondent should have treated the claim of June 26 as a request for a tax clearance certificate and that Respondent delayed more than the 30 days allowed by Section 23334 of the Revenue and Taxation Code in responding to the request for a tax clearance certificate. Without going into the question of whether under a proper set of facts estoppel could apply in a

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situation such as this, it certainly cannot be held that Respondent is estopped for failure to consider as a request for a tax clearance certificate a document which neither requests nor mentions a tax clearance certificate.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Mount Shasta Milling Company for refund of franchise tax in the amount of \$1,351.15 for the taxable year 1958 be and the same is hereby sustained,

Done at Sacramento, California, this 13th day of December, 1960, by the State Board of Equalization.

John W. Lynch, Chairman

Richard Nevins, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary